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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,451	04/30/2001	Ming Duong-van	3397P006	4450
8791 7590 05/28/2008 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER HOM, SHICK C				
ART UNIT 2616		PAPER NUMBER		
MAIL DATE 05/28/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/846,451

**Applicant(s)**

DUONG-VAN ET AL.

**Examiner**

SHICK C. HOM

**Art Unit**

2616

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-2, 5-10, and 12-14 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Objections***

2. Claims 1-2, 5-10, and 12-14 are objected to because of the following informalities: In claim 14 line 1, delete typo "claim 11" and insert ---claim 10--- because claim 11 has been canceled. In claim 1 lines 9-10, claim 6 lines 6-7, claim 9 line 10, delete "in the performance metrics" and insert ---of the performance metrics--- for consistency with claim 1 line 6, claim 6 line 2, claim 9 lines 5-6, respectively. Claims 2, 5, 12, 7-8, 13, 10, are objected to because they depend from objected claims 1, 6, 9, respectively. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2616

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2, 5-10, and 12-14 are rejected under 35

U.S.C. 102(e) as being anticipated by Ono et al. (2001/0021186).

Regarding claims 1-2, 6-7, 9-10, and 12-14.

Ono et al. disclose a method, comprising:

operating a control node of a communication network at a packet bandwidth wherein the control node coupled to a network node is located in a communication link between at least one server and at least one client;

determining at least one resonance state of a performance metric that exhibits improved network performance metrics at the control node by monitoring the performance metric and scanning across a range of bandwidths of the control node until the at least one resonance state in the performance metrics is observed indicating that one or more of the network performance metrics is optimized (paragraph 0031 recite observing, i.e. monitoring, traffic status to select an optimum condition of communication

and paragraphs 0097-0098 recite using the traffic status monitor/control including bandwidth-alteration responsive to the evaluated communication quality for improving the communication quality) and

setting said packet bandwidth of the control node based on the at least one resonance state of the performance metrics that is optimized; wherein the network performance metrics comprise one or more of throughput, average fetch time and packet loss (paragraphs 0331-0332 and 0338 recite that based on the monitored traffic status of the performance metrics, i.e. throughput, deterioration of data, congestion, the gateway equipment, i.e. control node, sends a request to the router for altering the bandwidth allocated to the data).

Regarding claims 5, 8:

Ono et al. disclose wherein the packet bandwidth is set by varying an inter-packet delay time over selected communication links at the control node (paragraph 0284 recite monitoring packet delay times using test packets).

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gilbert et al. disclose an adaptive time division duplexing method and apparatus for dynamic bandwidth allocation within a wireless communication system.

Rakoshitz et al. disclose traffic monitoring tool for bandwidth management.

Stanwood et al. disclose method and apparatus for allocating bandwidth in a wireless communication system.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHICK C. HOM whose telephone number is (571)272-3173. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pham Chi can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chi H Pham/  
Supervisory Patent  
Examiner, Art Unit 2616  
5/23/08

SH